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No. 191

In the Supreme Court of the United States

OCTOBER TERM, 1932

UNITED STATES OF AMERICA, PETITIONER

v.

CLARENCE P. ARZNER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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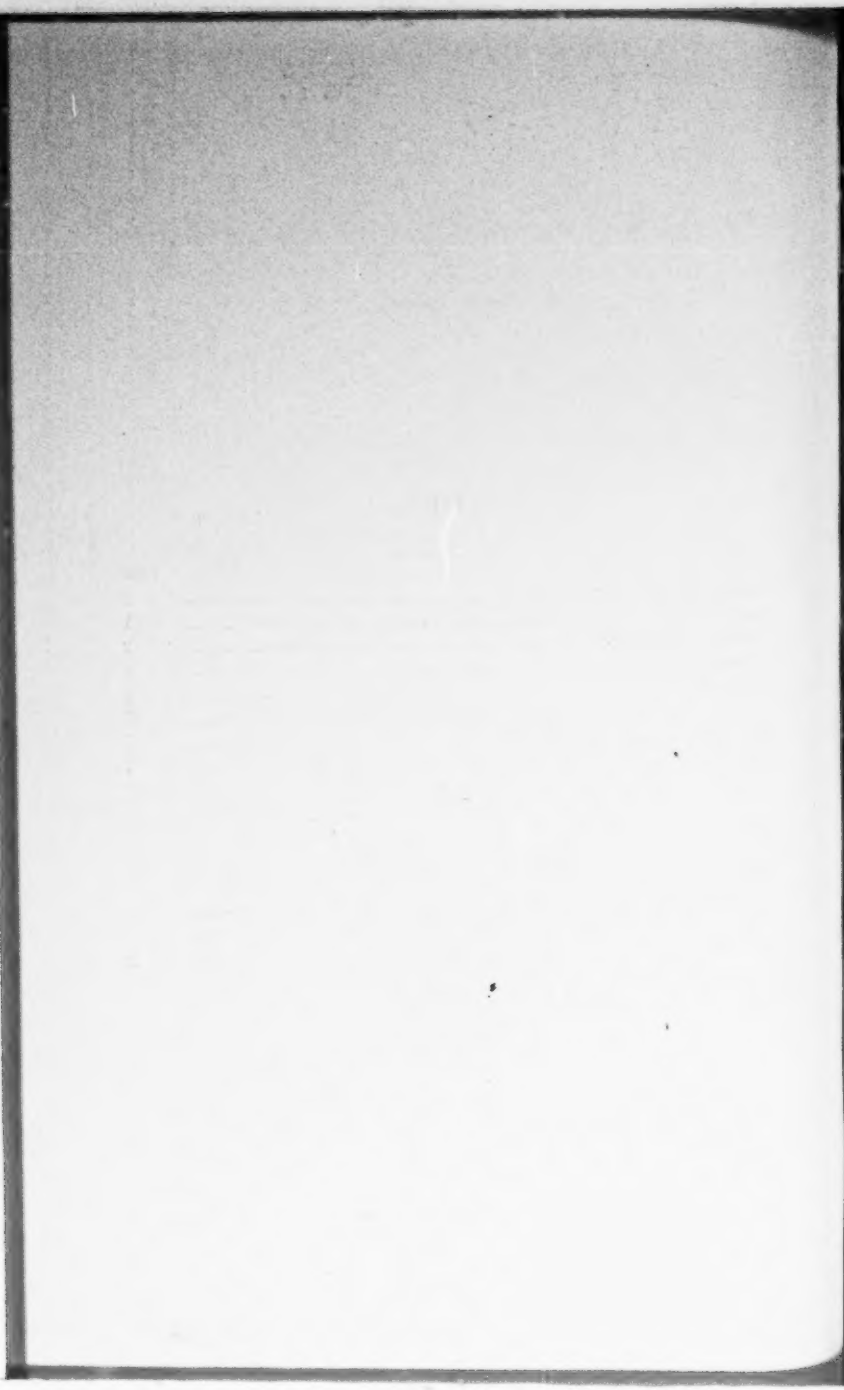
Statutes:

World War Veterans' Act of 1924, as amended by the Act of July 3, 1930, c. 849, 46 Stat. 991, 1001 (U. S. C. Sup. V., Title 38, Sec. 518) Sec. 307 2



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The Solicitor General, on behalf of the United States of America, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit entered in the above case on April 4, 1932 (R. 57), affirming the judgment of the United States District Court for the Western District of Washington.

OPINION BELOW

No opinion was rendered by the District Court. The opinion of the Circuit Court of Appeals (R. 53) is reported in 57 F. (2d) 488.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 4, 1932. (R. 57.) The juris-

diction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Where the holder of a policy of war risk term insurance, which has lapsed, reinstates and converts his insurance into ordinary life policies and then surrenders these policies upon payment of the cash surrender value, is he entitled, under Section 307 of the World War Veterans' Act of 1924, as amended by the Act of July 3, 1930, to recover upon the original policy for total and permanent disability occurring during the life of such policy, even though unable to surrender the converted policies?

STATUTE INVOLVED

Section 307 of the World War Veterans' Act of 1924, as amended by the Act of July 3, 1930, c. 849, 46 Stat. 991, 1001 (U. S. C. Sup. V, Title 38, Sec. 518) provides:

> All contracts or policies of insurance heretofore or hereafter issued, reinstated, or converted shall be incontestable from the date of issuance, reinstatement, or conversion, except for fraud, nonpayment of premiums, or on the ground that the applicant was not a member of the military or naval forces of the United States, and subject to the provisions of section 23: *Provided,* That the insured under such contract or policy may, without

prejudicing his rights, elect to make claim to the bureau or to bring suit under section 19 of this Act on any prior contract or policy, and if found entitled thereto, shall, upon surrender of any subsequent contract or policy, be entitled to payments under the prior contract or policy: *Provided further,* That this section shall be deemed to be effective as of April 6, 1917, and applicable from that date to all contracts or policies of insurance.

STATEMENT

This is an action against the United States to recover monthly installments alleged to have accrued under the terms of a war risk insurance policy for total and permanent disability occuring during the life of such policy. The essential facts are not in dispute, and, as disclosed by the pleadings and testimony, are as follows:

Respondent enlisted in the Army on or about March 29, 1918, and was discharged on January 16, 1919. (R. 2, 30.) While in the service he applied for and was granted a war risk insurance policy in the sum of $10,000, on which the premiums were paid to and including January, 1919 (R. 2, 30, 33), when the policy lapsed for nonpayment of premiums. On March 1, 1920, this policy was reinstated and converted into an ordinary life policy, upon which ~~petitioner~~ respondent paid the premiums to and including February, 1921. (R. 5–6, 30, 33.) On February 28, 1921, respondent surrendered

$5,000 of this insurance for the cash surrender value, which amounted to $45.20. (R. 6, 30–31, 33.) The remaining $5,000 was surrendered on December 29, 1921, for a cash surrender value of $18.30. (R. 6, 31. 33.)

The case was tried before a jury. (R. 11.) At the close of respondent's evidence, the Government moved for a nonsuit upon the ground, among others not now material, "that the plaintiff having reinstated and converted the entire $10,000 of his war risk insurance on or about March 1, 1920, and in the year 1921 having surrendered the entire converted policy and accepting its cash surrender value, is not in a position to comply with the Statute [Section 307 World War Veterans' Act, as amended by the Act of July 3, 1930, *supra,* p. 2] and, therefore, is precluded from recovering upon his term insurance policy." The District Court overruled this motion, holding that the statute had been sufficiently complied with by the prior surrender of the converted policies for their cash surrender value. (R. 35–36.) The Government excepted to this ruling (R. 36), and at the close of the evidence moved for a directed verdict upon the same ground. (R 37.) This motion being denied, exception was taken (R. 37.)

The case went to the jury upon the sole issue whether the respondent became totally and permanently disabled while his original policy was in

force. (R. 39.) The jury returned a verdict for the respondent, in which they found that "he became totally and permanently disabled on the 29 day of September, 1918." (R. 14.) Judgment was accordingly entered for the respondent for the monthly installments of insurance which remained unpaid as of June 26, 1931, the date of the verdict. (R. 15–17.) Upon appeal by the United States, the Circuit Court of Appeals for the Ninth Circuit affirmed the judgment of the District Court. (R. 52–58.)

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

1. In holding that respondent was entitled to recover upon his original policy despite his surrender of the converted policies and receipt of cash surrender value therefor.

2. In holding that respondent was entitled to recover upon his original policy even though he was not in a position, as required by Section 307 of the World War Veterans' Act of 1924, as amended July 3, 1930, to surrender his subsequent policies.

3. In affirming judgment of the District Court.

REASONS FOR GRANTING THE WRIT

1. The decision of the Circuit Court of Appeals for the Ninth Circuit in the instant case is in direct conflict with that of the Circuit Court of Appeals for the Tenth Circuit in *United States* v. *Andrews*,

43 F. (2d) 80. In that case it was held that a veteran was not entitled to recover upon that portion of his insurance which he had reinstated, converted, and later surrendered for the cash surrender value.

2. It is important that this conflict be speedily settled to the end that the proper rule may be applied in future cases. As appears from a tabulation supplied by the Veterans' Administration, printed as an Appendix hereto, there have been 61,912 contracts of war-risk insurance surrendered for the cash surrender value since 1920. The total amount of insurance covered by these contracts is over $185,000,000. At present there are pending on the dockets of the various United States District Courts over 9,000 actions upon war-risk insurance policies, and while there is no way of estimating the number of suits which have already been or will be filed in the future involving the question presented in the instant case, it is reasonable to assume that the number will be substantial.

Wherefore, it is respectfully submitted that the petition should be granted.

THOMAS D. THACHER,
Solicitor General.

JULY, 1932.

APPENDIX

Contracts of War Risk Insurance surrendered for cash surrender value

Year	Amount of insurance	Number of policies
1920	$1, 955, 500. 00	577
1921	16, 082, 422. 30	7, 202
1922	19, 401, 529. 61	8, 822
1923	13, 026, 096. 13	5, 525
1924	12, 289, 946. 50	4, 519
1925	12, 735, 641. 29	4, 253
1926	13, 955, 505. 48	4, 234
1927	15, 007, 623. 24	4, 338
1928	17, 497, 199. 43	4, 818
1929	19, 338, 212. 88	5, 311
1930	20, 361, 446. 74	5, 651
1931	23, 428, 504. 39	6, 662
Total	185, 079, 627. 97	61, 912

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